

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

IN RE REGIONS MORGAN KEEGAN
OPEN-END MUTUAL FUND
LITIGATION

Master File No. 2:07-cv-02784-SHM-dkv

CLASS ACTION

This Document Relates to:
ALL ACTIONS

IN RE REGIONS MORGAN KEEGAN
CLOSED-END FUND LITIGATION

Master File No. 2:07-cv-02830-SHM-dkv

CLASS ACTION

This Documents Relates to:
ALL ACTIONS

**MOTION FOR ORDER PRECLUDING ARBITRATION OF
DERIVATIVE AND CLASS CLAIMS AND FOR A STAY OF DISCOVERY**

Defendants Morgan Keegan & Co., Inc. (“Morgan Keegan”), and Morgan Asset Management, Inc. (“MAM”) (collectively “Defendants”), respectfully request that this Court issue an order precluding arbitration of derivative and class claims and for a stay of certain discovery concerning the arbitration proceeding captioned Ernst Koella, et al. v. Morgan Keegan & Co., Inc., FINRA Dispute Resolution No. 08-00181 (the “Koella Arbitration”).

As set forth more fully in the accompanying memorandum of law, Claimants in the Koella Arbitration are pursuing claims that are derivative in nature and part of the putative consolidated class actions pending before this Court. Financial Industry Regulatory Authority (“FINRA”) Rules expressly and unequivocally preclude these Claimants from arbitrating derivative and class action claims. See FINRA Rules 12204, 12205. Pursuit of such claims likewise intrudes on this Court’s jurisdiction with respect to the derivative and putative class actions pending before it.

Furthermore, Claimants have sought broad and burdensome discovery with respect to these impermissible claims. Claimants have obtained a subpoena directing MAM – a non-party to the Koella Arbitration – to produce documents from a multi-year period concerning the management of the investment companies for which it provided investment advisory services. These documents include all documents related to valuation of assets held by the investment companies and the compliance with liquidity and concentration restrictions applicable to such assets, documents related to the investment companies' exposure to sub-prime debt, all minutes of MAM Board and committee meetings and documents produced by MAM to federal regulators, including FINRA and the Securities and Exchange Commission ("SEC"). See Declaration of Matthew M. Curley ("Curley Dec."), Ex. 6 (the "MAM Subpoena").

The Koella Claimants likewise seek the production of similar documents from Morgan Keegan. Claimants have obtained an order in the Koella Arbitration requiring the production of agreements between Morgan Keegan and the investment companies and MAM, documents regarding valuation of assets held by the investment companies, compliance with investment company policies and procedures and all documents produced to federal regulators, including FINRA and the SEC. See Curley Dec., Ex. 5 (Claimants' First Request for Production of Documents and Information, Request Nos. 5-7 and 30).

The Koella Arbitration Panel has directed MAM to produce documents responsive to the subpoena by December 25, 2008, and has ordered Morgan Keegan to produce such documents by December 26, 2008. The Koella Arbitration is scheduled for January 12, 2009.

Absent an order barring the Koella Claimants from pursuing non-arbitrable derivative and class claims and an order barring discovery relating to the federal securities putative class actions pending in this Court, Claimants will effectively circumvent this Court's jurisdiction over

the derivative and putative class actions. Claimants also will obtain discovery presently stayed under the Private Securities Litigation Reform Act (“PSLRA”) and the Securities Litigation Uniform Standards Act (“SLUSA”).

In light of the Koella Claimants’ impermissible pursuit of derivative and class claims and discovery in support of such claims and based on the authority of this Court under FINRA Rules, the PSLRA and the All Writs Act, Defendants respectfully request that this Court issue an order: (1) precluding the Koella Claimants from pursuing derivative claims and class action claims in the Koella Arbitration; (2) precluding discovery of the type sought in the MAM Subpoena; and (3) precluding the Koella Claimants from pursuing discovery of the type sought in Request Nos. 5-7 and 30 of Claimants’ First Request for Production of Documents and Information.

In support of this motion, Defendants have submitted herewith a memorandum of law for filing and a proposed order and have filed the Declaration of Matthew M. Curley attaching documents relevant to this motion and a certificate of consultation. Defendants request oral argument with respect to this motion.

DATED this 18th day of December, 2008.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2008, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following and/or served the following via U.S. Mail:

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